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Federal Communications Commission  
Washington, D.C. 20554

DEC 29 1997

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

NOT RECORDED

The Honorable Phil Gramm  
United States Senator  
2323 Bryan Street, #2150  
Dallas, Texas 75201

Dear Senator Gramm:

Thank you for your memorandum dated December 3, 1997, on behalf of your constituent, Kenneth S. Fellman, Chairman, Local and State Government Advisory Committee, concerning the placement and construction of facilities for the provision of personal wireless services in WT Docket No. 97-192. In this proceeding, the Commission has sought comment on proposed procedures for reviewing requests for relief from State and local regulations that are alleged to impermissibly regulate the siting of personal wireless service facilities based on the environmental effects of radio frequency emissions, and related matters.

Because this proceeding is still pending, we cannot comment on the merits of the issues at this time. However, I can assure you that the Commission is committed to providing a full opportunity for all interested parties to participate. The Commission has formally sought public comment in this proceeding and, as a result, has received numerous comments from State and local governments, service providers, and the public at large. Your letter, as well as this response, will be placed in the record of this proceeding and will be given full consideration.

Further information regarding the Commission's policies toward personal wireless service facilities siting, including many of the comments in the two proceedings involving personal wireless service facilities, is available on the Commission's internet site at <http://www.fcc.gov/wtb/siting>.

Thank you for your inquiry.

Sincerely,

A handwritten signature in black ink, appearing to read "David L. Furth", written over a horizontal line.

David L. Furth  
Chief, Commercial Wireless Division  
Wireless Telecommunications Bureau

cc: CWD  
Dockets  
John Conwell  
j:\congress\7767

Phil Gramm  
Texas

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11/22/98  
BF

**United States Senate**

**MEMORANDUM**

Date: 12/3/97

WTB  
92-192  
7761

Federal Communications Commission  
Office of Congressional Affairs  
1919 M Street, N.W.  
Washington, DC 20554

A constituent has sent the enclosed communication. A response which addresses his/her concerns would be appreciated.

Please send your response, together with the constituent's correspondence, to the following address:

Office of Senator Phil Gramm  
2323 Bryan Street, #2150  
Dallas, Texas 75201

Attention: Curtis Edmonds  
(214) 767-3000  
(214) 767-8754 (fax)

ROBERT  
FUNK

# Memo

**To:** Amy Henderson

Steve McMillin

**From:** Laura Madden/Terry Bracy

**CC:** City of Fort Worth (Peter Vaky, Joe Paniagua)

**Date:** October 22, 1997

**Re:** FCC Rulemaking on CMRS Transmitting Facilities

The attached Advisory Recommendation was submitted to the FCC by the FCC Local and State Government Advisory Committee. As you know, this Committee was established as a consultative forum for the FCC with state and local elected and regulatory officials in the process of developing rules and implementing the Telecommunications Reform Act of 1996.

Last month, the LSGAC met for two days to discuss various FCC rulemakings. The attached was the most immediate, and clearly of great importance to local health and safety.

An important point to consider is that the FCC does not consider it their responsibility to review or certify transmitting facilities on matters of RF compliance or structural safety. However, this rulemaking proposes to limit the state and local role in ensuring compliance in these very essential areas. The FCC proposes to allow self-certification that facilities comply with emissions and safety requirements.

As you can imagine, self-certification is not acceptable to local citizens. If this rulemaking prevails, local governments, when faced with complaints and concerns on new or modified facilities, will have no recourse but to direct these complaints and concerns to your offices at the federal level.

It is unclear how or if the FCC will modify the pending rulemaking. A final rule is expected within 30-60 days.

FCC LOCAL AND STATE GOVERNMENT  
ADVISORY COMMITTEE

October 9, 1997

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: Procedures for Reviewing Requests for Relief From State  
and Local Regulations Pursuant to Section 332(c)(7)(B)(v)  
of the Communications Act of 1934 (WT Docket No. 97-197)

Dear Mr. Caton:

Please find enclosed an original and nine copies of the LSGAC's Advisory  
Recommendation No. 7 for filing in the above-referenced proceeding.

Thank you for your attention to this matter. Please feel free to contact me at  
(303) 320-6100 if you have any questions regarding this filing.

Very truly yours,

*Kenneth S. Fellman*

Kenneth S. Fellman  
Chairman, LSGAC

cc: Commissioners (w/encl.)  
William E. Kennard, Esq. (w/encl.)  
Susan Fox, Esq. (w/encl.)  
Sheryl Wilkerson, Esq. (w/encl.)  
LSGAC Committee Members (w/encl.)  
National Association Staff (w/encl.)

FCC Local and State Government Advisory Committee  
Advisory Recommendation Number 7 Regarding:  
Petition for Rulemaking of the CTIA Concerning Amendment to the Commission's  
Rules to Preempt State and Local Regulation of CMRS Transmitting Facilities  
(FCC 97-303; WT Docket No. 97-197)

1. The Commission has requested comment on two proposals that would limit the type of information that local and state governments may require to demonstrate that personal wireless facilities comply with the Commission's standards for human exposure to radiofrequency emissions ("RF Standards"). NPRM ¶¶ 142 et seq. The LSGAC appreciates the Commission's recognition that local officials should be able to provide constituents with meaningful assurance that facilities within the community comply with the RF Standards. The LSGAC disagrees with the Commission's proposed limits on local compliance monitoring for three fundamental reasons.
2. First, the LSGAC questions the Commission's authority to limit local and state efforts to ensure that facilities comply with the RF Standards. With respect to concerns about RF emissions, the Telecommunications Act preempts local decisions regulating the placement of personal wireless facilities only to the extent that the facilities comply with the RF Standards. The LSGAC is not interested in promoting or defending unreasonable or unnecessary compliance monitoring; however, the LSGAC does not believe the Telecommunications Act grants the Commission authority to limit or preempt local compliance monitoring.
3. Second, even if it is within the Commission's jurisdiction to impose such limits, the LSGAC disagrees with the Commission's conclusion that such limits are necessary or appropriate. The LSGAC questions why the Commission is interested in restricting, rather than guiding, state and local efforts to protect the public health and safety. The NPRM expresses concern that providers are experiencing construction delays while state and local officials search for methods to assess compliance. Instead of limiting local and state authority to monitor compliance with the RF Standards, the Commission should work with local and state governments to develop informational materials like the Fact Sheet #1 and Fact Sheet #2 that were issued by the Wireless Bureau. These materials were extremely helpful to local governments and expedited local processing of wireless facility permit applications. Similar materials focusing on monitoring compliance with the RF Standards would be equally valuable; they would minimize construction delays without dictating that state and local officials do less than they may reasonably believe is necessary to protect the public health and safety, and without generating expensive and unproductive litigation over the respective roles of federal, state and local authorities.
4. Third, the Commission's alternative proposals both disregard four fundamental realities. The following facts were acknowledged by the Commission staff from the Mass Media Bureau, the Wireless Bureau, and the Office of Engineering and Technology who met with staff from the cities in the ten major broadcast market areas on September 25 and with the LSGAC on September 26:

LSGAC Advisory Recommendation Number 7, cont.

- A. The Commission's regulatory scheme relies on providers of personal wireless services to self-certify that their facilities will comply with the RF exposure standards. (The Commission proposes to *extend* its policy of self-certification by adopting a *presumption* that facilities comply with the RF Standards. NPRM ¶147.)
- B. Whether or not a particular facility complies with the Commission's RF exposure standards depends on the specific circumstances of its installation – those circumstances that affect the ability of individuals to approach the facility and the area around the facility in which RF emissions exceed the Commission's standards.
- C. With respect to personal wireless facilities, the Commission does not collect any site-specific information about the circumstances of any particular installation. As a result, information provided to the Commission cannot establish whether a particular facility in a particular location risks exposing individuals to emissions that exceed the RF Standards.
- D. The Commission does not have resources to conduct any field assessments or monitoring of the circumstances under which licensees install facilities in particular locations.

The Commission's first proposed alternative would limit local and state governments to receiving: 1) self-certification statements comparable to those received by the Commission, and 2) documents related to RF emissions submitted as part of the Commission's licensing process. NPRM ¶143. Because compliance with the Commission's standards depends on site-specific factors, and because the Commission does not collect any site-specific information as part of its licensing process, this proposal completely fails to address the legitimate interests of local and state officials in providing meaningful assurance to the public that facilities comply with the RF Standards.

- 5. The Commission's second proposed alternative would allow local and state governments to require a *demonstration* of compliance only with respect to facilities that are categorically excluded from environmental assessment by the Commission because of their height above ground level or their low operating power. The LSGAC questions why the Commission proposes to provide *greater* latitude to local and state governments in evaluating RF Standard compliance for those facilities that the Commission has determined pose the *most remote* potential for generating emissions that exceed the RF exposure standards. State and local governments must be allowed to require a demonstration of compliance for facilities that create the greatest risk to public health and safety – those that are *not* categorically excluded from environmental assessment by the Commission's rules. The Commission's non-binding policy statement elaborating on what a demonstration of compliance might consist of offers a useful starting point. NPRM ¶ 146. However, this cannot serve as a limitation on state and local authorities. For example, state and local authorities cannot be restricted from conducting site visits to evaluate whether proposed restrictions on access to a facility have actually been

LSGAC Advisory Recommendation Number 7, cont.

constructed or installed as promised. The Commission's second proposal therefore fails to adequately recognize the responsibility of local and state officials.

6. The LSGAC is not prepared at this time to submit a proposal for recommended procedures to conduct meaningful monitoring of compliance with the Commission's RF Standards. The LSGAC would welcome the opportunity to work with Commission staff to develop such a proposal. The LSGAC therefore proposes to continue the dialogue with Commission staff that was initiated on September 25 and 26. The LSGAC would like to consider, at its November 21 meeting, a proposal developed jointly by local, state and federal staff for recommended monitoring procedures. The LSGAC believes that widespread distribution of recommended monitoring procedures would obviate any perceived need for preemption of state and local authority. The LSGAC would also welcome the opportunity to discuss recommended monitoring procedures with all interested industry associations at the LSGAC's November 21 meeting.

**RECOMMENDATION:** For the reasons discussed above, the LSGAC recommends and requests:

- A. That the Commission make appropriate Commission staff available to meet with staff who work for LSGAC members and for national organizations representing state and local government interests sometime in late October or early November to review and discuss proposals for recommended monitoring procedures.
- B. That members of the Commission and the Commission General Counsel participate in a discussion of any proposal arising from the meeting of local, state and federal staff at the next LSGAC meeting on November 21.
- C. That the Commission join the LSGAC in inviting interested industry associations to discuss any proposal arising from the meeting of local, state and federal staff at the November 21 meeting of the LSGAC.

Adopted by the LSGAC on September 26, 1997

  
Kenneth S. Fellman  
Chairman